

EXHIBIT 1



May 31, 2019

VIA ONLINE PORTAL

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Re: Freedom of Information Act (FOIA) Request – EXPEDITED PROCESSING

Dear FOIA Officers:

Al Otro Lado and the Southern Poverty Law Center (“AOL” and “SPLC,” respectively, or “Requesters,” jointly) submit this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.* Requesters also request a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and Department of Homeland Security (DHS) regulations at 6 C.F.R. § 5.5(e). The justifications for the fee waiver and expedited processing are set out in detail following the request.

1. REQUEST FOR INFORMATION

Requesters ask for the following categories of information:

A. Any and all records¹ that were prepared, received, transmitted, collected and/or maintained by U.S. Customs and Border Protection (CBP)² and/or DHS that describe, refer, or relate to the policies, practices, criteria, standards, guidelines, recommendations and/or procedures used by CBP personnel, including but not limited to U.S. Border Patrol agents, U.S. Office of Field Operations officers, or private contractors with CBP,³ to screen, inspect, process, and/or decide whether to screen, inspect, or process, unaccompanied noncitizen children⁴ who were at or near a port of entry on the U.S.-Mexico border or at the U.S.-Mexico land border in between ports of entry from May 2018 to the present.

The requested records include, but are not limited to, those describing, referring, or relating to:

- (1) Criteria, standards, and/or guidelines that CBP personnel use to determine whether an unaccompanied noncitizen child at or near a port of entry on the U.S.-Mexico border or at the U.S.-Mexico land border, in between ports of entry, should be screened or interviewed;
- (2) The terms and conditions under which CBP personnel may turn away and/or delay the arrival in the United States of an unaccompanied noncitizen child who is at or near a port

¹ The term “records” as used herein includes, but is not limited to: communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations. This request encompasses communications to or from CBP personnel’s personal accounts on platforms such as WhatsApp or Signal, if they used such accounts to communicate regarding the above-listed topics and/or the general topic of the FOIA request.

² The term “CBP” as used herein means CBP headquarters offices, including any divisions, subdivisions or sections therein; CBP field operations offices, including any divisions, subdivisions or sections therein; CBP offices at ports of entry, including any divisions, subdivisions or sections therein; and/or any other CBP organizational structures.

³ Throughout this document, the term “CBP personnel” is defined to include but not be limited to U.S. Border Patrol agents, U.S. Office of Field Operations officers, and/or private contractors with CBP.

⁴ The term(s) “unaccompanied noncitizen child(ren)” as used here means a child who— (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody. *See* 6 U.S.C. § 279(g)(2) (defining “unaccompanied alien child”).

of entry on the U.S.-Mexico border or at the U.S.-Mexico land border in between ports of entry;

- (3) Policies, procedures, recommendations, or guidelines relating to the screening, inspection or processing of unaccompanied noncitizen children who are at or near a port of entry on the U.S.-Mexico border or at the U.S.-Mexico land border in between ports of entry, including but not limited to:
- a. Use of tickets or a ticketing system, or any other metering device or process,⁵ to manage the screening, inspection, and/or processing of such children;
 - b. Use of or reliance on a “waitlist” to manage the screening, inspection, and/or processing of such children;
 - c. Requiring documentation of identity before allowing such children to present themselves at a port of entry;
 - d. Determining the age of such children, including when in the process of screening, inspection, and/or processing of such children CBP personnel are authorized to make such determination;
 - e. Determining whether a non-citizen child traveling with an adult other than a parent qualifies as “unaccompanied”;
 - f. Questioning such children regarding whether they traveled with a “caravan”;
 - g. Questioning such children regarding whether they sought legal assistance or spoke with an attorney in Mexico;
 - h. Questioning such children regarding whether they sought legal assistance or spoke with an attorney from Requester Al Otro Lado;
 - i. Requiring that a CBP supervisor be present, or otherwise approve the agency’s acceptance of the child for processing as an unaccompanied minor, before such children are allowed to enter the port of entry;
 - j. Requiring that attorneys or other adult advocates present with such children at or near the port of entry leave the vicinity before CBP will admit such children to the port of entry for screening, inspection, and/or processing;
 - k. Use of handcuffs or other devices to restrain such children while they are in the port of entry;
 - l. The presence of Members of Congress at a port of entry while such children are seeking to present themselves;
 - m. Different or disparate treatment of such children who are of African or Haitian descent;
 - n. Directing such children away from a port of entry;
 - o. Requiring or conducting pre-screening of such children by local, state, or federal Mexican authorities and/or private security personnel; or
 - p. Requesting that Mexican officials and/or their agents, including private security organizations, remove such children from the vicinity of a port of entry.

⁵ “Metering” refers to a CBP policy of turning away asylum seekers at ports of entry, ostensibly to “regulate the flow” of migrants. Office of Inspector General, *Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* (Sept. 27, 2018), OIG-18-84, at 6, available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

- (4) Communications or records of communications, whether electronic or otherwise, to or from or within or among CBP or DHS personnel, or any of their agents, agencies, sub-agencies, or offices, relating to the screening, inspection, or processing of unaccompanied noncitizen children at or near a port of entry on the U.S.-Mexico border or at the U.S.-Mexico land border in between ports of entry, including but not limited to communications describing, referring, or relating to:
- a. Use of tickets or a ticketing system, or any other metering device or process, to manage the screening, inspection, and/or processing of such children;
 - b. Use of or reliance on a “waitlist” to manage the screening, inspection, and/or processing of such children;
 - c. Requiring documentation before allowing such children to present themselves at a port of entry;
 - d. Determining the age of such children, including when in the process of screening, inspection, and/or processing of such children CBP personnel are authorized to make such determination;
 - e. Determining whether a non-citizen child traveling with an adult other than a parent qualifies as “unaccompanied”;
 - f. Questioning such children regarding whether they traveled with a “caravan”;
 - g. Questioning such children regarding whether they sought legal assistance or spoke with attorneys in Mexico;
 - h. Questioning such children regarding whether they sought legal assistance or spoke with attorneys from Requester Al Otro Lado;
 - i. Requiring that a CBP supervisor be present, or otherwise approve the agency’s acceptance of the child for processing as an unaccompanied minor, before such children are allowed to enter the port of entry;
 - j. Requiring that attorneys or other adult advocates present with such children at or near the port of entry leave the vicinity before CBP will admit such children to the port of entry for screening, inspection, and/or processing;
 - k. Use of handcuffs or other devices to restrain such children while they are in the port of entry;
 - l. The presence of Members of Congress, including but not limited to Reps. Pramila Jayapal (WA-7), Nanette Barragán (CA-44), and Jimmy Gomez (CA-34), at a port of entry while such children are seeking to present themselves;
 - m. Different or disparate treatment of such children who are of African or Haitian descent;
 - n. Directing such children away from a port of entry;
 - o. Requiring or conducting pre-screening of such children by local, state, or federal Mexican authorities and/or private security personnel; or
 - p. Requesting that Mexican officials and/or their agents, including private security organizations, remove such children from the vicinity of a port of entry.
- (5) Communications or records of communications, whether electronic or otherwise, to or from or within or among CBP or DHS personnel, or any of their agents, agencies, sub-agencies, or offices, relating to inquiries by and other communications from Sen. Jeff Merkley (OR) regarding the screening, inspection, or processing of unaccompanied noncitizen children at or near a port of entry on the U.S.-Mexico border or at the U.S.-Mexico land border in between ports of entry.

- (6) Cooperation, collaboration, or other interaction of CBP personnel with local, state or federal Mexican government officials, including but not limited to Rudolfo Figueroa of *Instituto Nacional de Migración* (INM) and Alejandro Salinas of Grupo Beta Tijuana, regarding the presence, arrival, and/or processing of unaccompanied noncitizen children at or near a port of entry on the U.S.-Mexico border or at the U.S.-Mexico land border in between ports of entry;
- (7) Cooperation, collaboration, or other interaction of CBP personnel with private security organizations regarding the presence, arrival and/or processing of unaccompanied noncitizen children at or near a port of entry on the U.S.-Mexico border or at the U.S.-Mexico land border in between ports of entry; and
- (8) Training materials or other records used to instruct, guide, or otherwise prepare CBP personnel to screen, inspect, or process unaccompanied noncitizen children at or near a port of entry on the U.S.-Mexico border or at the U.S.-Mexico land border in between ports of entry.

B. Any and all records (including video) that were prepared, received, transmitted, collected and/or maintained by CBP and/or DHS that describe, refer, or relate to any incidents in which unaccompanied non-citizen children were handcuffed or otherwise physically restrained in a port of entry.

The requested records include, but are not limited to, those describing, referring, or relating to:

- (1) When, where, and why any such children were handcuffed or otherwise physically restrained, and for how long;
- (2) How the decision was made to handcuff or otherwise physically restrain such children;
- (3) The CBP personnel who were involved in making the decision to handcuff or otherwise physically restrain such children; and
- (4) The CBP and DHS personnel who were involved in reviewing the decision to handcuff or otherwise physically restrain such children.

C. Any and all records that were prepared, received, transmitted, collected, and/or maintained by CBP and/or DHS that describe, refer, or relate to unaccompanied non-citizen children who presented themselves at the San Ysidro port of entry on any of the following dates and who were denied permission to enter the port of entry by CBP personnel:

- (1) May 6, 2018;
- (2) July 27, 2018;
- (3) December 1, 2018;
- (4) December 4, 2018;
- (5) December 17, 2018;
- (6) January 28, 2019;
- (7) March 21, 2019;
- (8) April 26, 2019;
- (9) May 21, 2019; and

(10) May 26, 2019.

D. Any and all records that were prepared, received, transmitted, collected and/or maintained by CBP and/or DHS that describe, refer, or relate to communications, whether electronic or otherwise, to or from or within or among CBP or DHS personnel, or any of their agents, agencies, subagencies, or offices, that describe, refer, or relate to the policies, practices, and/or procedures used by CBP personnel to respond to attorneys who submit requests for A-numbers and/or other information on behalf of their unaccompanied noncitizen child clients with a completed form G-28 Notice of Entry of Appearance as Attorney attached, from May 2018 to the present.

E. Any and all records that were prepared, received, transmitted, collected and/or maintained by CBP and/or DHS that describe, refer, or relate to communications, whether electronic or otherwise, to or from or within or among CBP personnel that describe, refer, or relate to the following individuals and/or electronic mailing addresses, from May 2018 to the present:

1. Jessica Fuller, jess@alotrolado.org;
2. Rebecca ("Becca") Title, rebecca@alotrolado.org;
3. Erika Pinheiro, erika@alotrolado.org; and
4. Nicole Ramos, nicole@alotrolado.org.

Requesters ask that any records that exist in electronic form be provided in their native electronic format on a compact disc, digital video disk, or equivalent electronic medium. Requester asks that any documents stored in Portable Document Format ("PDFs") be provided as individual files in a searchable PDF format. Finally, Requester asks that reasonable metadata be transmitted along with files, including but not limited to maintaining parent-child relationships between emails and their attachments, author information, as well as date and time stamp information. If any of the requested records or information are not kept in a succinct format, we request the opportunity to view the documents in your offices.

All requested records that are responsive may be provided with personally identifying details redacted. FOIA exempts information from disclosure if that disclosure would lead to an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(6). Determination of this exemption requires a balancing of the public's interest in obtaining the information against any possible invasions of privacy which would result from disclosure. *See, e.g., Wood v. FBI*, 432 F.3d 78, 87-89 (2d Cir. 2005). The Supreme Court has held that this balancing act does not preclude the disclosure of military records when names and other private details are redacted. *See Dep't of the Air Force v. Rose*, 425 U.S. 352 (1976). Requester expects the release of all segregable portions of otherwise exempt material.

If, under applicable law, any of the information requested is considered exempt, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

2. REQUEST FOR WAIVER OF FEES

Requesters ask that the agency waive all fees associated with this FOIA request.⁶ Such a waiver is warranted because disclosure of the information is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). Furthermore, Requester SPLC is a “representative of the news media” and seeks these records not for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). In addition, Requesters have the ability to disseminate widely the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

A. Disclosure of the Information Is in the Public Interest

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to the processing and treatment of unaccompanied noncitizen children at or near a port of entry on the U.S.-Mexico border or at the U.S.-Mexico land border. Such information is of great public interest given the vulnerability of these children, the U.S. interest in preventing their victimization or subjection to trafficking, and the dramatic increase of asylum-seekers arriving at and/or crossing over the U.S.-Mexico border, including at ports of entry, in recent years. Though the increase of unaccompanied child asylum-seekers has garnered growing attention,⁷ much remains unknown about the specific policies and procedures employed

⁶ In the alternative, Requesters ask for a limitation on fees pursuant to 6 C.F.R. § 5.11(d).

⁷ *See, e.g.*, Wendy Fry, *Unaccompanied minors vulnerable, missing in Tijuana*, S.D. Union-Tribune (May 13, 2019), <https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-05-11/unaccompanied-minors-vulnerable-missing-in-tijuana>; Kate Morrissey, *Unaccompanied children stuck in Tijuana, hoping to reach U.S.*, S.D. Union-Tribune (Mar. 29, 2019), <https://www.sandiegouniontribune.com/news/story/2019-03-29/unaccompanied-children-stuck-in-tijuana-hoping-to-reach-u-s>; Adolfo Flores, *Mexican Authorities Are Stopping Unaccompanied Kids from Seeking Asylum In The US At Every Turn*, BuzzFeed News (Feb. 13, 2019), <https://www.buzzfeednews.com/article/adolfoflores/children-unaccompanied-asylum-immigration-mexico-border>; Human Rights Watch, *US: Unaccompanied Children Turned Back at Border* (Dec. 24, 2018), <https://www.hrw.org/news/2018/12/24/us-unaccompanied-children-turned-back-border>; Wendy Fry, *Two migrant caravan teens killed in Tijuana*, S.D. Union-Tribune (Dec. 18, 2018), <https://www.sandiegouniontribune.com/news/border-baja-california/sd-me-migrant-children-killed-12182018-story.html>; Karen Coates, *Crossing the Border as an Unaccompanied Child*, Pacific Standard (May 24, 2017), <https://psmag.com/social-justice/crossing-the-border-as-an-unaccompanied-child>; Jerry Markon and Joshua Partlow, *Unaccompanied children crossing southern border in greater numbers again, raising fears of new migrant crisis*, Wash. Post (Dec. 16, 2015), https://www.washingtonpost.com/news/federal-eye/wp/2015/12/16/unaccompanied-children-crossing-southern-border-in-greater-numbers-again-raising-fears-of-new-migrant-crisis/?utm_term=.18c5af4d8e91.

by CBP personnel in screening, inspecting, and processing these children as they arrive at the border or when they are apprehended in the United States. The requested information is critically important to assist attorneys, unaccompanied child asylum-seekers, and the general public in understanding how the U.S. government treats some of the most vulnerable individuals seeking safe haven in our country.

Requesters have the capacity, intent and demonstrated ability to disseminate the requested information to a broad cross-section of the public. AOL is a bi-national non-profit legal services organization established to serve indigent refugees, migrants, and deportees in the U.S. and Mexico. AOL staff regularly provide information and analysis to the media and the general public, as well as international organizations and human rights monitoring bodies, including the International Committee of the Red Cross, Amnesty International, the United Nations High Commissioner for Refugees, Human Rights Watch. Additionally, AOL co-directors regularly lecture at professional and academic conferences, and at schools and universities, on the subject of border enforcement practices. Finally, AOL actively shares and disseminates information about its work and conditions on the U.S.-Mexico border through its various social media accounts, which have thousands of followers including many immigration reporters.

SPLC is a national nonprofit legal advocacy organization specializing in civil rights litigation, public interest advocacy, and education. SPLC also regularly provides such information and analysis to the media and the general public. SPLC has synthesized and disseminated information from prior FOIA requests, and state-level public records requests, to facilitate the sharing of this information with a broad public audience.⁸ Requesters will analyze and share the information obtained through this FOIA request via their websites, social media accounts and other publicly accessible fora. If the responsive information is voluminous, Requesters also will publish a summary analysis of such information and will disseminate that summary through their established networks. Finally, Requesters have regular contact with national and international print and news media and plan to share information gleaned from FOIA disclosures with interested media.

⁸ See e.g., Swathi Shanmugasundaram, “Florida Anti-Immigrant Group Lobbies to Introduce Legislation Attacking Immigrants” (Feb. 9, 2019), *available at* <https://www.splcenter.org/hatewatch/2019/02/07/florida-anti-immigrant-group-lobbies-introduce-legislation-attacking-immigrants> (analyzing Florida public records documents produced pursuant to SPLC request); Stephen Piggott, “Andy’s Law fails in Alabama, but the anti-Muslim legislation has passed in seven states to date” (Mar. 23, 2018), *available at* <https://www.splcenter.org/hatewatch/2018/03/22/andy%E2%80%99s-law-fails-alabama-anti-muslim-legislation-has-passed-seven-states-date> (summarizing and analyzing results of Florida records request); SPLC Hatewatch Blog, “FOIA documents reveal how anti-Muslim groups use Idaho State Representative Eric Redman to sound the false alarm on ‘sharia law’” (Feb. 12, 2018), *available at* <https://www.splcenter.org/hatewatch/2018/02/12/foia-documents-reveal-how-anti-muslim-groups-use-idaho-state-representative-eric-redman> (summarizing and analyzing results of public records requests); Southern Poverty Law Center, “Immigrant detainees in Georgia more likely to be deported than detainees elsewhere” (Aug. 23, 2016), *available at* <https://www.splcenter.org/news/2016/08/23/immigrant-detainees-georgia-more-likely-be-deported-detainees-elsewhere> (analyzing FOIA data on Stewart and Irwin immigrant detention centers).

Thus, a fee waiver would fulfill Congress's legislative intent in amending the FOIA. *See Rossotti*, 326 F.3d at 1312 ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters."); *Citizens for Responsibility and Ethics in Washington v. U.S. Dep't of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) ("[FOIA's] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.").

B. Disclosure of the Information Is Not Primarily in the Commercial Interest of Requesters

Requesters are 501(c)(3) not-for-profit organizations. We seek the requested information for the purpose of disseminating it to members of the public who have access to our public websites, our public social media feeds, and other free publications at no cost, and not for the purpose of commercial gain.

C. Requester SPLC Is a Representative of the News Media

Furthermore, Requesters also request a waiver of search fees on the grounds that SPLC qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Specifically, SPLC meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii) (note).⁹ *See also Nat'l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, "devices indices and finding aids," and "distributes the resulting work to the public" is a "representative of the news media" for purposes of the FOIA). Courts have repeatedly found similar organizations, like the American Civil Liberties Union (ACLU), to qualify for a fee waiver under the same theory. *See Serv. Women's Action Network v. DOD*, 888 F. Supp. 2d 282, 288 (D. Conn. 2012) (finding requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. DOJ*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience"); *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information"). SPLC is therefore a "representative of the news media" for the same reasons it is "primarily engaged in the dissemination of information."

SPLC publishes reports about government conduct and extremist hate groups based on its analysis of information derived from various sources, including information obtained from the government through FOIA and public records requests.¹⁰ Disseminating that information to the press and public is a critical and substantial component of SPLC's work and is among its primary activities. This material is broadly circulated to the public in a variety of formats and widely available to

⁹ *See also* 5 C.F.R. § 2604.103; 28 C.F.R. § 16.10(b)(6); 5 C.F.R. § 294.103(c); and 41 C.F.R. § 105-60.305-1 (i)

¹⁰ *Supra* note 8.

everyone for no cost. These reports, analysis, videos, and case-related news are disseminated through the SPLC website and SPLC's various social media accounts. See www.splcenter.org, www.facebook.com/SPLCenter, www.twitter.com/splcenter, www.instagram.com/splcenter.

In the past year alone, SPLC's online content, including articles and other publications, was viewed over 12 million times. SPLC content gets more reader engagement, in the form of shares, clicks, and likes, than sites operated by many traditional media companies. Over 8 million separate individuals visited our website, and the site was viewed over 22 million times. SPLC's social media accounts have more than 1.6 million followers. Therefore, when it conducts these public education and dissemination activities, SPLC is a representative of the news media.

Courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to SPLC's are "representatives of the news media" as well, even though they engage in litigation and lobbying activities in addition to disseminating information and educating the public. See, e.g., *Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Nat'l Sec. Archive*, 880 F.2d at 1387; *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Elec. Privacy Info. Ctr. v. Dep't of Defense*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for purposes of the FOIA); *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a "public interest law firm," a news media requester).

As a representative of the news media, Requesters plan to analyze, publish, and disseminate the public the information gathered through this request. The records requested are not sought for commercial use and the Requesters plan to disseminate the information to the public at no cost. On account of these factors, fees associated with responding to FOIA requests are regularly waived for non-profit public interest organizations like SPLC which are "representatives of the news media."

3. REQUEST FOR EXPEDITED PROCESSING

Finally, Requesters ask that this request be processed on an expedited basis. See 5 U.S.C. § 552(a)(6)(E) (mandating that agencies establish expedited processing regulations); 6 C.F.R. § 5.5(e) (DHS' expedited processing regulations). This request qualifies for such expedited processing under all four scenarios laid out in 6 C.F.R. § 5.5(e)(1)(i)-(iv).

First, any delay in disclosing the requested information "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," namely of the many unaccompanied non-citizen children currently living in Mexican border cities and seeking access to the U.S. asylum process. 6 C.F.R. § 5.5(e)(1)(i). In late 2018, two Honduran migrant teenagers, who were waiting in Tijuana for the opportunity to seek asylum in the United States, were stabbed, strangled, and murdered, and their bodies were dumped in an alley.¹¹ Unaccompanied children are

¹¹ Fry, *Two migrant caravan teens killed in Tijuana*, *supra* note 7.

vulnerable to abuse, trafficking, and other dangers when living alone in dangerous border cities.¹² To the extent any delays in the inspection and processing of unaccompanied non-citizen children are due to U.S. government policy, that policy would be responsible for the imminent threats such children are facing. Disclosing records that either illustrate or disprove the existence of U.S. policy related to delaying the entry of unaccompanied minors seeking asylum is therefore critical to protecting them from these threats.

Second, there is “[a]n urgency to inform the public about an actual or alleged federal government activity,” and this request is being made by at least one Requester that is “primarily engaged in disseminating information.” 6 C.F.R. § 5.5(e)(1)(ii). On the latter point, please refer to the above discussion regarding SPLC’s status as a “representative of the news media.” On the former point, the treatment of unaccompanied non-citizen children at the U.S.-Mexico border is a matter of widespread media and public interest, and the requested records will inform the public about DHS and CBP activity of concern to it.¹³ The urgency to inform the public goes beyond the general public interest in government transparency—it responds to ongoing serious public concerns from Congress and the public, and will answer specific questions that have recently been raised regarding the government’s treatment of unaccompanied non-citizen children seeking safety and asylum on our southern border.

Third, delay in disclosing the requested information could lead to “[t]he loss of substantial due process rights.” 6 C.F.R. § 5.5(e)(1)(iii). Unaccompanied non-citizen children at ports of entry or on the border have rights under the Trafficking Victims Protection Reauthorization Act and other federal statutes, and as such they have corresponding constitutional due process rights. If the government has adopted any policy regarding these children that fails to respect their due process rights, it is critical to release such records immediately so that Requesters can seek to protect these children’s rights through public education, advocacy, and other means.

Finally, this request seeks records on “[a] matter of widespread and exceptional public media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 6 C.F.R. § 5.5(e)(1)(iv). As noted above, the public and media have shown a “widespread and exceptional . . . interest in” the issue of unaccompanied non-citizen child asylum seekers on the southern border. There is current litigation against the government on various aspects of its asylum policies at the southern border; that litigation in addition to media coverage of the unaccompanied non-citizen children in particular have raised “questions about the government’s integrity which affect public confidence.” *See Al Otro Lado v. McAleenan*, 3:17-cv-02366-BAS-KSC (S.D. Cal.) (challenging alleged “Turnback Policy”); *East Bay Sanctuary Covenant v. Trump*, 3:18-cv-06810-JST (N.D. Cal.) (challenging executive order denying right to apply for asylum to persons who cross the border between ports of entry); *Innovation Law Lab v.*

¹² Fry, *Unaccompanied minors vulnerable, missing in Tijuana*, *supra* note 7 (“Municipal authorities in Tijuana estimate there are hundreds of unaccompanied minors like Milagros and Xiomara living without parents and under the radar in the violent border city, leaving them vulnerable to exploitation or human trafficking. U.S. and Mexico immigration data indicates the numbers are likely much higher.”).

¹³ *See, e.g., supra* note 7.

Nielsen, 3:19-cv-00807-RS (N.D. Cal.) (challenging “Remain in Mexico” policy applied to asylum seekers on the southern border).

Pursuant to 6 C.F.R. § 5.5(e)(3), the undersigned certify that the information provided above as a basis for requesting expedited processing is true and correct to the best of their knowledge and belief.

Thank you for your prompt attention to this request. Per DHS regulations, we expect to receive a decision within 10 calendar days whether to grant expedited processing. 6 C.F.R. § 5.5(e)(4). We also expect a written response to our FOIA request within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i). If you have any questions, do not hesitate to contact either of the undersigned by telephone or email.

Sincerely,

/s/ Nicole Ramos

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